

THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

December 11, 2001

IN RE:

CAPITAL MORTGAGE FUNDING, L.L.C.

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DOCKET NO. 01-00656

ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") at a regularly scheduled Authority Conference held on August 7, 2001, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the "CSD") and Capital Mortgage Funding, L.L.C. ("Capital Mortgage") for violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statutes, Tenn. Code Ann. § 65-4-401 *et seq.* The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(f) authorizes the Authority to initiate proceedings relative to violations of the Do-Not-Call statutes and the TRA rules and regulations (Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.*) promulgated pursuant to the Do-Not-Call statutes. "Such proceedings may include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction." Tenn. Code Ann. § 65-4-405(f).

Between September 11, 2000 and June 26, 2001, the CSD received three (3) separate complaints against Capital Mortgage from Tennessee consumers whose residential telephone numbers were properly and timely registered on the Tennessee Do-Not-Call Register. During the investigation of these complaints, the CSD determined that Capital Mortgage had engaged in the solicitation of Tennessee residential telephone subscribers without registering as a telephone solicitor and obtaining the Tennessee Do-Not-Call Register, in violation of Tenn. Code Ann. § 65-4-401 and Tenn. Comp. Rules & Reg. 1220-4-11-.04(1). Capital Mortgage faced a maximum fine for these four (4) violations of Tenn. Code Ann. § 65-5-401 *et seq.* of eight thousand (\$8,000) dollars.

The proposed Settlement Agreement was negotiated as the result of the CSD's investigation into the complaints against Capital Mortgage. In negotiating the terms and conditions of this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

Capital Mortgage, a company which employs approximately six (6) workers, is located in Nashville, Tennessee, and has no known history of violating the statutes and rules enforceable by the Authority. The CSD's investigation revealed that Capital Mortgage has not engaged in a pattern of continued violations of Tenn. Code Ann. § 65-4-401 *et seq.* Once Capital Mortgage obtained counsel, it cooperated fully with the CSD's investigation of the above mentioned complaints and ceased all telemarketing activity in Tennessee until it registered as a telephone

solicitor and obtained the Do-Not-Call register from the Authority as required by Tenn. Comp. Rules & Reg. 1220-4-11-.04(1).

As a part of the Settlement Agreement, Capital Mortgage agreed to implement measures, as outlined in Exhibit A, to prevent similar occurrences in the future. In addition, Capital Mortgage agreed to pay to the Authority the amount of five thousand dollars (\$5,000) in the following manner: Capital Mortgage will remit one thousand dollars (\$1,000) on the date of the Authority's approval of the Settlement Agreement and one thousand dollars (\$1,000) per month, no later than the first business day of each month for the following four (4) consecutive months.

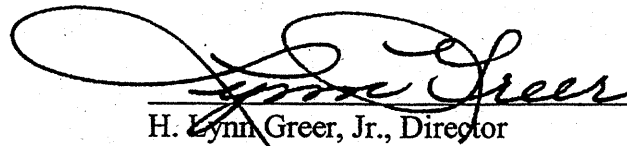
The manager of Capital Mortgage, Michael Michitti, appeared at the Authority Conference on August 7, 2001. Following a discussion with the parties and a review of the Settlement Agreement, the Directors voted unanimously to accept and approve the Settlement Agreement.

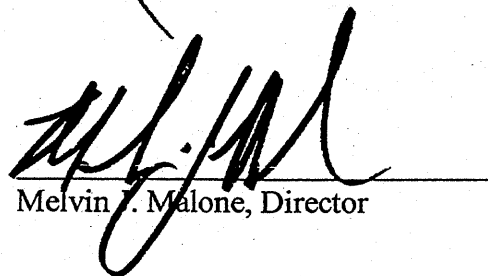
IT IS THEREFORE ORDERED THAT:

1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.
2. Capital Mortgage Funding, LLC agrees to pay the amount of five thousand dollars (\$5,000) into the Public Utilities Account of the TRA in the following manner: Capital Mortgage will remit one thousand dollars (\$1,000) within five (5) days of the Authority's approval of the Settlement Agreement, and one thousand dollars (\$1,000) per month, no later than the first business day of each month for the following four (4) consecutive months.
3. Upon payment of the amount of five thousand dollars (\$5,000), Capital Mortgage is excused from further proceedings in this matter, provided that, in the event of any failure on the part of Capital Mortgage to comply with the terms and conditions of the Settlement


Agreement, the Authority reserves the right to re-open this docket.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary